

SUPERIOR COURT OF THE STATE OF CALIFORNIA **FILED**

COUNTY OF DEL NORTE

MAR 30 1999

HONORABLE ROBERT W. WEIR, JUDGE

SUPERIOR COURT OF CALIFORNIA
COUNTY OF DEL NORTE

* * *

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff,

-vs-

ELLIOT SCOTT GRIZZLE,

Defendant.

Case No. 97-268-X

Reporter's transcript of proceedings on TRIAL BY
JURY, in the above-entitled action, before Hon. ROBERT W.
WEIR, Judge, at the Del Norte County Courthouse, Crescent
City, California, on February 11, 1999, reported by
William C. Beard, RPR, CSR No. 10460

COPY

Volume IIII

A P P E A R A N C E S

FOR THE PEOPLE:

MICHAEL D. RIESE
District Attorney
County Courthouse
Crescent City, CA 95531

By: Jim Fallman, Chief Deputy D.A.

FOR THE DEFENDANT:

RUSSEL J. CLANTON
Attorney at Law
725 8th Street, Suite D
Arcata, CA 95521

1 A Yes.

2 MR. FALLMAN: Thank you, Doctor.

3 MR. CLANTON: I have no further questions,
4 your Honor.

5 THE COURT: May your witness be excused?

6 MR. CLANTON: Yes.

7 THE COURT: Thank you. You are excused.

8 Next witness.

9 MR. FALLMAN: I'm sorry. Your Honor, the next
10 witness would be Mr. Clark, Gregory Clark.

11 THE COURT: All right.

12 MR. FALLMAN: Your Honor, may we approach while
13 we're waiting?

14 THE COURT: On the record?

15 MR. FALLMAN: On the record. And I'd ask Officer
16 Dan Smith, Special Agent Dan Smith to approach the bench
17 with us.

18 (Sidebar conference.)

19 MR. FALLMAN: Your Honor, just before lunch
20 Mr. -- we asked that Mr. Frederick Scott be brought here
21 as our next -- or Frederick Clark be brought here as our
22 next witness. He got here and we went back to talk to
23 him, Special Agent Smith and I and John McKinney and
24 Kelly Keefer from our office, and this new discovery
25 which we have just handed to counsel I've only had it
26 myself since we started the testimony of Mr. Lawrence.

27 THE COURT: What new discovery?

28 MR. FALLMAN: It was stuff found -- what happened

1 is Mr. Clark told us there was some evidence back in his
2 cell, and I sent Special Agent Smith and
3 Sergeant McKinney out. This is what they seized, copies
4 of it, and I'm saying this because I had no idea that
5 this stuff existed until just now, so I've just given it
6 to the defense.

7 THE COURT: So what are you asking me to do?

8 MR. FALLMAN: I just wanted to put that on the
9 record that's why this discovery is coming in or came
10 to -- was being handed to the defense at this time. He
11 may want to look at it before we examine.

12 THE COURT: I'd rather not delay unless you get
13 some other witness you want to call instead.

14 MR. FALLMAN: I really don't, but just -- I just
15 wanted to --

16 THE COURT: So why don't we get started and if
17 you want to take a break before you cross-examine, that
18 will be about the right time.

19 MR. CLANTON: I need to make a record, your
20 Honor, if the Court wants to go forward with this
21 witness, because I don't feel it's proper to go forward
22 with this witness. Although it's only one page, one
23 paragraph says volumes, and I don't think it's fair.

24 THE COURT: What is it? What's the big deal?

25 MR. SMITH: Here's a copy.

26 THE COURT: All right. It's a note which says --
27 it's in handwriting, written by -- it says: "You might
28 want to tell Jim Fallman that now that I've seen an

1 effort on his behalf to do what he says, I'll have a
2 little more corroborating info into his case against
3 Grizzle. And some handwritten information by Grizzle et
4 al. That he may need to know before Monday. Clark.

5 But it requires additional immunities from
6 prosecution."

7 Well, I don't see there's any difference between
8 this and if it came up in the middle of his
9 cross-examination. Why do we need to delay the trial
10 because of this?

11 MR. CLANTON: Well, one, I don't know that
12 this -- what this individual's going to say about the
13 type of information he's talking about here.

14 THE COURT: Neither do I. Why don't we ask him
15 and find out?

16 MR. CLANTON: Because I would prefer, if I'm
17 going in a cross-examination scenario, to have done the
18 proper investigation about these types of -- in response
19 to the information he claims to be able to elicit.
20 Otherwise, I'm going to be standing there flat-footed
21 without any response to this activity.

22 THE COURT: What is this stuff supposed to be?

23 MR. FALLMAN: I haven't read it myself. It's
24 stuff he said that was in his cell that might add to his
25 testimony.

26 THE COURT: Well, I don't know if I want to delay
27 this trial because some convict says something in his
28 cell. Why don't we get started and we'll find out what

1 he says and then if we need a break, I'll take it.

2 MR. CLANTON: I think it's appropriate time. I
3 may be asking for sanctions under this type of
4 situation.

5 THE COURT: Well, when time comes, we'll deal
6 with that. Let's proceed.

7 (Open court resumed.)

8 MR. CLANTON: Could I have just a moment to talk
9 to Mr. Grizzle, your Honor?

10 THE CLERK: Sir, if you could raise your right
11 hand, please.

12 FREDERICK CLARK

13 after having been duly sworn, testified as follows:

14 THE CLERK: Would you state your name, please.

15 THE WITNESS: Frederick Clark.

16 THE CLERK: Thank you.

17 MR. FALLMAN: Afternoon, Mr. Clark.

18 THE WITNESS: Afternoon.

19 DIRECT EXAMINATION

20 BY MR. FALLMAN:

21 Q Sir, you --

22 MR. CLANTON: Excuse me, Mr. Fallman, I requested
23 a moment to speak to Mr. Grizzle before he starts.

24 MR. FALLMAN: Oh, I'm sorry.

25 MR. CLANTON: Thank you.

26 Your Honor, I think that we need to approach on
27 the record one more time.

28 THE COURT: All right.

1 (Sidebar conference.)

2 MR. CLANTON: Your Honor, my concern is when you
3 look at this last line, it would appear that the
4 district attorney had this discovery prior to this date,
5 because Mr. Clark indicates in the last line that he may
6 need to know before Monday. Now, I understand that to
7 be Monday, the date of the start of the trial. This is
8 Thursday.

9 Now, I feel that if, in fact, the district
10 attorney or CDC has had this information here, we're in
11 a position here where I can't effectively cross-examine
12 this individual because I do not know everything that is
13 in these reports that I've got, which are several pages,
14 that are letters in here. This -- this --

15 THE COURT: Well, I thought this -- was this one
16 page that was handed to you or a whole bunch of more
17 stuff?

18 MR. CLANTON: We were given this as well. A
19 number of reports.

20 THE COURT: You were given this, what, now?

21 MR. CLANTON: There is a number of reports.
22 There are letters --

23 THE COURT: When did you get that? Just now?

24 MR. CLANTON: Yes. And it would appear that the
25 District Attorney had this since Monday.

26 This defendant has written he may need to know
27 more before Monday. Now I suspect Monday was the trial
28 date.

1 THE COURT: Well, when he wrote it and the D.A.
2 got it, it may be the same date or different dates. I
3 have a representation the D.A. just got it.

4 MR. FALLMAN: Mr. Smith can tell you that he got
5 this from the guy's cell over lunch. I didn't have any
6 of this until just about five minutes before I handed
7 you your copy.

8 MR. CLANTON: Well, in any event, I would like
9 the Court just to look at the volume of information.

10 THE COURT: All right. Let's see what you got
11 here.

12 Okay. From what I've read is a pack of papers, a
13 package of papers that have been handed to me by
14 Mr. Clanton. I've looked at them briefly.

15 They essentially contain allegations by
16 Inmate Clark, the witness, that at some point -- and as
17 should be noted for the record, Mr. Clark is a black
18 man -- he indicates that, at some time earlier some
19 correctional officer asked him why he was getting
20 involved in testifying for skinheads, and Mr. Clark
21 telling the officer that it was none of his business and
22 apparently some angry exchange about that. That
23 essentially, repeated in a number of ways, is what this
24 is about. And Clark having that he was -- that the
25 officer was trying to discourage him from testifying.

26 But I do not see that that justifies stopping
27 this trial to investigate. You can simply ask him
28 whether that happened and whether it had any effect on

1 his testimony, and if he says no, or if he says yes,
2 whatever it may be, follow up with questions from there.

3 I do not see that that requires stopping this or
4 sending anybody out to investigate it further. It
5 either happened or it didn't and Clark can tell us what
6 effect, if any, it may have had on his testimony. So
7 are we ready to proceed then?

8 MR. FALLMAN: Yes.

9 MR. CLANTON: I need make a further record here,
10 your Honor, with all due respect to the Court. I am I'm
11 not asking this proceeding to be stopped. I'm just
12 asking that this one witness be put on at another time
13 so I have the opportunity not only just to read this
14 myself, but to discuss it with my client and discuss
15 what it means.

16 My client is extremely agitated by the advent of
17 this additional discovery and he's extremely agitated by
18 the fact I really don't have the opportunity to sit down
19 with him and discuss it at this point.

20 He's on trial for his life, basically, and I've
21 gotten a package of discovery with an inmate who is
22 prepared to testify against him, and I have a sheet of
23 material here that I have not been able to review. My
24 cross-examination is going to be impaired because of
25 that, and my client relationship is going to suffer as
26 well.

27 THE COURT: Well, it sounds to me, if he's all
28 agitated about it, it sounds like much ado about

1 nothing. I guess anybody would wonder why a black
2 person would testify for skinheads, but that mystery to
3 one side, it does not strike me that this requires
4 delaying the testimony of the witness.

5 I think the more sensible conclusion is simply to
6 keep the witness available to be recrossed if anything
7 comes up on this later, which I doubt it will, but it
8 appears to me to be making a mountain out of a mole
9 hill.

10 I don't know why Clark is so surprised that
11 anybody would ask or be curious why he's testifying for
12 skinheads, either. That just strikes me as being rather
13 peculiar, actually.

14 MR. CLANTON: Well if I may, your Honor, in fact,
15 he's not testifying for skinheads. He is now, in fact,
16 a prosecution witness and is going to be recanting his
17 testimony that he gave at Littrell's trial. The tables
18 have turned 180 degrees here.

19 THE COURT: Well, he did at some time, so I don't
20 know, but it strikes me that this stuff, that some
21 officer may have had the audacity to ask him: Why are
22 you doing this? doesn't really shed any light on this
23 case. And finding out why the officer asked that
24 wouldn't shed any light on it either, so it doesn't
25 strike me as being reasons for a delay of the trial.

26 MR. CLANTON: Well, again, I would just like to
27 know for the record. I'm not asking for a delay of the
28 trial, simply a delay of the witness appearing.

1 Mr. Fallman, I know, has other witnesses he could put on
2 while we have the opportunity to review this.

3 THE COURT: Well, I just don't have that much
4 curiosity nor would anybody, any reasonable person, as
5 to why the officer would be puzzled that Clark would
6 have testified for the Nazis. That's what -- the
7 officer may have been puzzled about that. Yes, he may
8 have asked Clark about that, but so what.

9 MR. CLANTON: Well, with all due respect to the
10 Court, the issue is a little more complex than that
11 because Mr. Clark at one time was a defense witness.
12 Some events have transpired. He is now listed as a
13 prosecution witness, being called for that. We were
14 just given discovery on that just prior to the trial and
15 now at the very cusp of his testimony, we're given
16 additional discovery.

17 THE COURT: Well, because all this complaint
18 about the officer asking that question comes from Clark
19 in the first place, just ask Clark. There's no need to
20 delay things for this. So your request is denied.

21 MR. CLANTON: Okay.

22 (Open court resumed.)

23 THE COURT: You may examine.

24 MR. FALLMAN: Thank you, your Honor.

25 DIRECT EXAMINATION

26 BY MR. FALLMAN:

27 Q Mr. Clark, is it your feeling one way or another
28 you need special protection for some reason?

1 A Yes.

2 Q And are you attempting to get protection in the
3 state witness protection program?

4 A Yes.

5 Q Have you been offered immunity by the district
6 attorney's office for anything that you're going to say
7 related to this case but not for perjury, if you perjure
8 yourself?

9 A That's correct.

10 Q All right. Did you testify in another trial last
11 year in this court?

12 A Yes.

13 Q What case was that in?

14 A A homicide case of Gary Littrell.

15 Q Okay. And which side called you to the stand in
16 that case; the prosecution or the defense?

17 A The defense.

18 Q And did you testify for the defense under oath?

19 A Yes.

20 Q Did you testify truthfully?

21 A No.

22 Q Did someone -- could you tell us the reason that
23 you lied under oath at that trial?

24 A Well, because -- well, the -- I lied in that
25 trial because it was necessary to discredit one of the
26 witnesses that was coming to testify for the prosecuting
27 attorney in that case.

28 Q Who was the witness that you were told to try to

1 discredit?

2 A A guy named Brian Healy. I knew him as Deadeye,
3 so that's what I know him as.

4 Q Were the things that you said about Deadeye Healy
5 true?

6 A No.

7 Q Who put you up to lying about Deadeye?

8 A Mr. Grizzle asked me to.

9 Q All right. Mr. Grizzle asked you to come to
10 Littrell's trial and lie about Prosecution Witness
11 Healy?

12 A Yeah, well, to discredit him.

13 Q All right. And what, if anything, did
14 Mr. Grizzle say about Deadeye to you?

15 A Well, a lot of things. You know, that he had --
16 he had debriefed to the prison gang coordinators or IGI
17 that's there in the institutions. And initially I
18 didn't believe it. You know, I know -- I know that for
19 a long time, you know, I know him since the early '90s,
20 Deadeye, and I didn't believe it originally, you know.

21 And he showed me some court transcripts and some
22 other papers that clearly, you know, made me change my
23 mind that he did debrief against the Aryan Nation or the
24 Aryan Brotherhood, excuse me. And as a result of that,
25 he needed to be discredited.

26 Q So who showed you transcripts of Mr. Healy's
27 testimony?

28 A Mr. Grizzle.

1 Q All right. And where did this take place?

2 A In the institution's -- in our unit that we were
3 living in at the time.

4 Q Pelican Bay?

5 A Yes.

6 Q All right. And what, if anything, did
7 Mr. Grizzle -- did Mr. Grizzle know anything about the
8 family of Mr. Healy out on the street?

9 A Yes. His daughters -- you know, that's really,
10 you know, that's the only reason I'm involved in all of
11 this is because Deadeye's daughter, you know, or what
12 was told to me, you know, I was asked, you know, could I
13 find Deadeye's daughters. You know, it's kind of known
14 throughout some circles in the institution, it's kind of
15 known through some circles in the institution, you know,
16 that, you know, I'm capable of maybe locating some
17 individuals on the street. And, you know, I was asked
18 to locate his daughter, you know.

19 And to be perfectly honest with you, you know
20 what I'm saying, whatever it is that I've ever
21 participated in in my life, I've never participated in
22 doing anything malicious to somebody's kid.

23 Q So somebody wanted information about Deadeye's
24 daughter who lives somewhere out in the street, after
25 Deadeye had testified in some transcripts?

26 MR. CLANTON: I'm going to object. It's leading
27 the witness, your Honor.

28 THE COURT: Overruled. You may answer.

1 THE WITNESS: That's correct.

2 BY MR. FALLMAN:

3 Q All right. And did -- and was Mr. Grizzle the
4 person that wanted that information about where the
5 daughter was?

6 A Yes.

7 Q Did Mr. Grizzle happen to give you a name of any
8 relatives of Deadeye Healy?

9 A Yes.

10 Q What did he say?

11 A That he gave me the name and approximate age of
12 her. Her name was Shannon McCole I believe, and she was
13 approximately eight or nine years old, and that she was,
14 I believe, with her foster parent.

15 Q Did Mr. Grizzle tell you why he wanted to find
16 out where eight-year-old Shannon McCole was?

17 A Well, the -- they wanted to -- the A.B., you
18 know, maybe not him specifically, but the A.B. was going
19 to retaliate against Deadeye and -- by, you know, taking
20 her out.

21 Q Taking her out, meaning killing that little girl?

22 A Yes.

23 Q And is that why you -- first of all, did you --
24 did I find you or did you find me?

25 A I actually found you, or found not you but
26 someone at the institutions.

27 Q And if I understood your testimony, you decided
28 to come forward and tell what you knew about this

1 situation because of the little girl?

2 A Yeah, you know, I mean, again, you know, there
3 are a lot of things that, you know, I've did in my life,
4 but, you know, the reoccurring thoughts of, you know,
5 what happened to, you know, Polly Klass, it's not a
6 situation where, you know, that I want to be in at all.

7 I'm getting ready to go home and I don't have
8 anything to gain by being in the know, but, you know,
9 just that thought keeps eating at me, you know what I
10 mean? And I don't want to see that situation happen
11 again, the situation I was in.

12 Q Mr. Clark, you mentioned the word Aryan
13 Brotherhood a couple of times in some of your answers.
14 I'm not trying to do anything that sounds prejudice or
15 anything, I mean, but just so the record shows, because
16 the Court of Appeals might be looking at this case
17 later, you do happen to be a black man, do you not?

18 A Yes.

19 Q And do you happen to know anything about, since
20 you've mentioned the Aryan Brotherhood, as to whether
21 they stand for black peoples' rights or not?

22 A Not hardly.

23 Q Okay. They're a white supremacist group, are they
24 not?

25 A Yeah.

26 Q Why were you willing originally, before the
27 little girl came up, to falsely, knowingly perjure
28 yourself for the Aryan Brotherhood?

1 A From what?

2 Q Who offered you money to come tell a lie for
3 Mr. Littrell?

4 A Mr. Grizzle.

5 Q Okay. And how much were you offered?

6 A Approximately 500 just to come in to discredit
7 Deadeye.

8 Q What are some of the things that you said at the
9 last trial that were lies about Deadeye?

10 A Well, that he -- explained to me what it was that
11 he was going to come in here and basically testify about
12 or where he got his testimony from, how it is that he
13 went about debriefing in the institution, how it is that
14 he went about debriefing or gathering information that
15 he would submit in court.

16 Q What were you told about Littrell's plans to come
17 in here to court? What did they tell you was going to
18 happen?

19 MR. CLANTON: I would object to relevance
20 throughout this point, your Honor.

21 THE COURT: Overruled.

22 MR. CLANTON: I would --

23 THE WITNESS: Well --

24 MR. CLANTON: I would object on 352 grounds, your
25 Honor. The discussion that Mr. Fallman's having with
26 this witness at this point involves another procedure.

27 THE COURT: Well, narrow the question down to
28 what he was told by Mr. Grizzle.

1 BY MR. FALLMAN:

2 Q What, in this regard, did Mr. Grizzle say to you
3 about what Littrell's trial was going to be like or what
4 they planned to do?

5 A Well, you know, I was brought in for two reasons.
6 One to discredit Deadeye. Secondly, is because I'm
7 black. You know what I mean? There's no question about
8 it that, you know, this was a -- that was a case that
9 was based upon the fact that this was a -- the Aryan
10 Brotherhood, which is just an exclusive white
11 organization. And I was brought here to broadside the
12 prosecuting attorney on that case, to discredit -- and
13 to discredit Deadeye.

14 If Littrell's case could get dropped from first
15 degree to second degree murder, then Grizzle, being a
16 co-defendant, would walk. There's no such thing as
17 conspiracy to commit a second degree murder.

18 Q That is originally what happened, isn't it?

19 A Yes.

20 Q And so you did broadside the prosecution a little
21 bit in that case, didn't you?

22 A Yeah, a little bit.

23 Q All right.

24 A Yes.

25 Q Part of your agreement to testify you did
26 negotiate with me, did you not?

27 A Excuse me?

28 Q You did negotiate with me and ask for some

1 things, did you not?

2 A Yes.

3 Q And you do want the Attorney General or the
4 D.A.'s office to go through the Department of
5 Corrections and the California Attorney General and try
6 to get you safe housing somewhere else and witness
7 protection if possible; is that correct?

8 A Yes.

9 Q Why do you feel you need that? Although I know
10 the answer's obvious.

11 A Yeah, I mean there ain't no question about it
12 that -- I've taken steps to like move my family out of
13 California and to -- because, you know, it's obvious I'm
14 going to be retaliated against as a result of coming
15 here today. And, you know, my life is in jeopardy as a
16 result of this. But, again, you know, there's a kid
17 involved. You know what I mean? It's a bad situation.

18 Q Back at a time -- well, at lunch did somebody
19 come to the holding cell here in this building to talk
20 to you?

21 A Yes.

22 Q Who came into that holding cell?

23 A You, yourself and the -- Mr. Smith there, and the
24 lady sitting behind you.

25 Q Kelly Keefer?

26 A Yeah, and someone else.

27 Q John McKinney?

28 A Yes.

1 Q Okay. What did you tell us at lunch?

2 A That I had -- I have forgotten a couple of
3 things. I have -- I had contacted -- a couple of weeks
4 ago, I had contacted someone in the institution, you
5 know, to provide a letter, or a -- some papers to them,
6 you know, that I've -- they said they would contact you,
7 you know, contact the prosecutors attorney's office and
8 have you guys come and pick them up, to have you guys
9 come and pick them up, and it never happened, so that's
10 basically what it is that I was talking about.

11 Q Did you send -- did you tell us to go somewhere
12 for some reason at the lunch hour?

13 A Yes, I told you -- told the Mr. McKinney --
14 that's his name?

15 Q Yeah, Sergeant McKinney.

16 A Yeah, Sergeant McKinney, I told him to go to my
17 cell because I had had papers in my cell at that
18 particular time.

19 Q Among those papers -- first of all, we wouldn't
20 use any of them except just the last two. I'd ask that
21 these -- it's marked, two yellow pages at the top. It
22 says Exhibit D on Page 1, and at the end of it it says,
23 "Signed, Elliott Scott Grizzle, Declarant." On Page 2,
24 your Honor. And it's dated -- the second page is
25 dated -- I don't see a date anywhere on it.

26 THE COURT: All right. The second page is a
27 continuation of the first?

28 MR. FALLMAN: Yes, your Honor.

1 THE COURT: All right. Let's just staple them
2 together and we'll just call it a single exhibit.
3 What's next in order?

4 MR. CLANTON: Your Honor, we're going to be
5 objecting to any uses of these documents under 1054 with
6 the appropriate sanctions.

7 THE COURT: The objection is overruled.

8 THE CLERK: Be Peoples' 60.

9 THE COURT: Exhibit 60 for identification.
10 Two-page note, handwritten.

11 (Exhibit 60 marked for identification.)

12 MR. FALLMAN: Oh, I misspoke. They pointed out
13 to me that the document does say July 21st on it, your
14 Honor. Those are the dates. 1998. And now I see that.

15 Q Sir, is that one of the documents you sent these
16 police officers out to get out of your cell?

17 A Yes, that's correct.

18 Q Okay. Where was that in your cell? Where did
19 you tell them to go to find it?

20 A It was located in a book on one of the beds in my
21 cell.

22 Q Okay. And who wrote that?

23 A Mr. Grizzle.

24 Q Who gave that to you?

25 A Mr. Grizzle.

26 Q And was that written back at a time when
27 Mr. Grizzle apparently still thought that you were going
28 along with the false statements about Healy?

1 A Correct.

2 Q And that's all in Mr. Grizzle's handwriting, to
3 your recollection and knowledge?

4 A Correct.

5 Q People would move in number 60, your Honor.

6 MR. CLANTON: We're going to object, your Honor,
7 under 1054.

8 THE COURT: Approach the bench, Counsel.

9 (Sidebar conference.)

10 THE COURT: All right. My recollection was that
11 at the last bench conference, I was handed a packet of
12 paper pertaining to Clark's complaint about some officer
13 asking: Why are you testifying for the skinheads?

14 Now we're talking about a document allegedly
15 written by Grizzle. This is something different now
16 from what we were talking about last time?

17 MR. FALLMAN: This is the last two pages of what
18 you were -- this is an exhibit in support of Clark's
19 complaint.

20 THE COURT: All right. I see. All right.
21 Nevertheless, I'm going to overrule the objection.

22 Any other record you want to make on it other
23 than what we've done already?

24 MR. CLANTON: No, I would just reiterate that I
25 think this is a sandbag job by the People. This
26 discovery, I think they were aware of this, and to
27 deliver it literally when this witness takes the stand
28 is a violation under 1054.

1 THE COURT: What factual basis do you have for
2 establishing that they knew of it before today?

3 MR. CLANTON: Because of the statement of
4 Mr. Clark's latest message to them that they should know
5 this by Monday, and it's obviously his intent to have
6 this information to them, the information they do have,
7 and it can be easily inferred that his message, the way
8 he phrased it there, was made at a time that he was
9 delivering this information and anticipating the trial
10 date and waiting, making sure it was very important the
11 people have the information, or at least CDC have that
12 information prior to the trial date, that inference can
13 be directly drawn from that statement.

14 THE COURT: All right. And what is your
15 statement as to when you first learned of this?

16 MR. FALLMAN: Your Honor, we all went back in the
17 holding cell.

18 THE COURT: Today?

19 MR. FALLMAN: Today at lunch. And when we
20 learned that this even existed, I sent two officers out
21 there and they brought it back, and at 1:00 I had it,
22 and at five after one he had it, and I hadn't even had a
23 chance until -- I read it while you were reading your
24 copy up here at the bench.

25 THE COURT: Well, the prosecutor is an officer of
26 the court just as a defense attorney is. I'm going to
27 have to rely upon his statement, unless you have more to
28 show that it's not true. Simply drawing the inference

1 Clark may have authored something prior to Monday
2 doesn't mean the D.A. had it sooner than today.

3 MR. CLANTON: Well, I'm completely in a
4 defenseless position with regards to that because I just
5 have the document. I've not been able to look into any
6 of the statements by Mr. Clark or any -- or be able to
7 investigate his motives for all of this information that
8 is amounting to a broadside on the defense right in the
9 middle of trial.

10 THE COURT: Well, if what you will be seeking
11 would be impeachment of Clark, it really is, other than
12 the fact that he is a self-admitted perjurer, wouldn't
13 add much anyway.

14 MR. CLANTON: If I may, with all due respect to
15 the Court, your Honor, this business about an
16 eight-year-old girl and that is his motive for coming
17 here, is an extremely inflammatory type of accusation.
18 I think probably one of the most inflammatory that
19 somebody could make, that my client is somehow engaged
20 in the committing of a child murder. That's basically
21 what this testimony is, inflammatory to the maximum, and
22 I think that it would be -- I think it would be proper
23 discretion of the Court to provide us the opportunity to
24 provide a response to that other than put this before
25 the jury and that's that and the defense have to
26 scramble, that's basically what we're doing right now,
27 and I think it's fundamentally unfair to Mr. Grizzle to
28 be put in that position.

1 THE COURT: Well, I don't know that Mr. Clark's
2 credibility is particularly high about that of -- of
3 anything, including the story about any eight-year-old
4 girl. The idea he is suddenly doing this out of public
5 spirit gives me the reaction of: Yeah, right. But --

6 MR. CLANTON: If I may, your Honor.

7 THE COURT: I suspect that the jury will deal
8 with it the same way. His credibility is so badly
9 shaken by his admission that he's created perjury in a
10 case related to this one that, again, I don't see that
11 it requires -- that the prosecutor learning about this
12 and your learning about this today justifies suppression
13 of the evidence. So the motion is denied.

14 MR. CLANTON: If I may respond just briefly for
15 the record.

16 I appreciate and respect the Court's decision.
17 However, I think the Court views Mr. Clark from a
18 perspective having dealt with inmates over a long period
19 of time and having a pretty good idea of their
20 credibility, and I think the Court has a veteran's
21 perspective on that. But with all due respect, I don't
22 think this jury shares that same perspective. They're
23 people off the street. They've not dealt with inmates
24 over a long period of time. They have precious few ways
25 to gauge the credibility the way the Court does. And I
26 think they look at it from a completely different
27 perspective.

28 The specter of Polly Klass being drawn into this

1 and a child murder, I don't think this jury takes very
2 lightly. I think that their emotions are inflamed by
3 those kinds of comments and they're going to be wanting
4 to believe that. And I think it's only correct and
5 fair, given this is a jury trial, Mr. Grizzle, give him
6 the opportunity to rebut these assertions.

7 THE COURT: Well, the jurors are mature adults
8 and I really doubt that they are inflamed. I suspect
9 that they, like any reasonable person, would look at
10 Mr. Clark askance once he admits that he has lied under
11 oath, and would naturally wonder, is he doing it again?
12 So -- particularly when he gives his motive as being
13 public spirit -- so we'll leave it for them to sort it
14 out. I think they're capable. Proceed.

15 MR. CLANTON: Just one more comment just if I
16 may, your Honor. I think that part of the prejudice
17 associated with this scenario is the fact that I have to
18 stop and interpose the objections and we have to have
19 these bench conferences, I think that has the
20 communication to the jury that I -- we're somehow caught
21 defenseless in this situation, and I think that incurs
22 prejudice to Mr. Grizzle, the fact that we have to stop
23 in the middle of this and -- at my urging, and have
24 these conversations. I think that communicates to the
25 jury that perhaps we're somehow concerned, which in fact
26 we are, and I think that communicates, directly,
27 prejudice to our case.

28 THE COURT: Well, I guess it's always a tactical

1 choice whether to ask for a bench conference to raise an
2 objection, but I don't know, other than not making
3 objections, I don't know how I can help you with that.
4 I suppose we could hold a hearing out of the jury's
5 presence or something, but at this point we've got --
6 we've discussed it and made a ruling and I don't know
7 that there's any need anymore to hold a hearing on it.

8 MR. CLANTON: That is fine. I felt a need to
9 make a record, your Honor.

10 THE COURT: All right. Proceed.

11 I believe you are offering Exhibit 60; is that
12 correct?

13 MR. FALLMAN: Yes, your Honor.

14 THE COURT: Okay. Exhibit 60 is received.

15 (People's No. 60 received into evidence.)

16 MR. FALLMAN: Thank you.

17 (Sidebar concluded.)

18 BY MR. FALLMAN:

19 Q I have one more question for you and it's not to
20 embarrass you, but I need to ask you this. We ask it to
21 all witnesses that are inmates. I need to know what
22 felonies you've been convicted of.

23 A I've been convicted of assault with a deadly
24 weapon. A burglary. I've been convicted of having sex
25 with an under-age female. And those are the crimes that
26 I'm in prison for right now.

27 MR. FALLMAN: Thank you.

28 THE COURT: Cross-examine?

CROSS-EXAMINATION

BY MR. CLANTON:

Q Good afternoon, Mr. Clark.

A Good afternoon.

Q Mr. Clark, on January 5th, did you contact a James Rogers?

A James Rogers.

Q Sure.

A No. I believe that he might have come to see me at the institution, but I've never written to James Rogers.

Q You know who he is?

A Yeah, I believe he's from I.A., Internal Affairs.

Q Okay. And you met with him on January 5th of this year, did you not?

A Yeah, if that's the date.

Q Okay. And gave a statement to him, didn't you?

A Yes.

Q And it was a taped statement?

A Yes.

Q And in that statement you indicated that you had perjured yourself at Mr. Littrell's trial; is that correct?

A Yes.

Q And that Mr. Grizzle had initiated your participation in that perjury; is that correct?

A Yes.

Q And you told him that you received, indirectly,

1 \$500 as payment for your testimony, right?

2 A That's correct.

3 Q Nowhere in that recitation did you mention any
4 eight-year-old or nine-year-old girl, did you?

5 A Well --

6 Q Yes or no, Mr. Clark?

7 A I believe I did.

8 Q I'm going to show you a summary of your taped
9 statement. Would you like to review that?

10 A Sure.

11 Q May I approach, your Honor?

12 THE COURT: Yes.

13 BY MR. CLANTON:

14 Q Could you look at that, please.

15 A Yes.

16 Q Did you review it?

17 A Okay.

18 Q Anywhere in there any mention of any eight or
19 nine-year-old girl?

20 A No.

21 Q Thank you.

22 Now, Mr. Clark, you filled out a, I believe it
23 looks likes a 602, that would be an inmate parolee
24 appeal form. And you filled that out and signed it on
25 July 21st, 1998. Do you remember that?

26 A Yes.

27 Q And do you recall what that 602 was all about?

28 A Yes.

1 Q Do you want to tell this jury?

2 A I believe it was about an officer named Newman.
3 I believe it was about being threatened for taking an
4 active participation in the trial of Mr. Littrell.

5 Q Can you tell us what happened between you and
6 Officer Newman?

7 A Yeah, nothing, really.

8 Q Well, what was -- what did you do -- put in your
9 602 that transpired between and you Officer Newman?

10 A It was really written for a couple of reasons.

11 Q Excuse me, Mr. Clark, I'd like you to be
12 responsive to the question.

13 What did you put in your 602 regarding what
14 transpired between you and Officer Newman?

15 A That Officer Newman had threatened me for taking
16 a participation in a former trial, the prior trial,
17 prior to this one.

18 Q Precisely what did Officer Newman tell you?

19 A That he pointed his rifle at me.

20 Q And what did he say when he pointed his rifle at
21 you?

22 A Why were you getting involved in these skinheads
23 business?

24 Q That he threatened you, right?

25 A Yes.

26 Q What did he threaten you with besides his gun?

27 A 115s, stopping me from paroling.

28 Q There you go. What about your parole?

1 A What about it?

2 Q What did he threaten you with with regards to
3 your parole?

4 A That I wouldn't get out of the institution.

5 Q What did he say, I'm asking you?

6 A Well, I mean, it's been a long time since I
7 looked at the paper.

8 Q Would you like to look at it?

9 A Sure.

10 Q May I approach?

11 THE COURT: Yes.

12 THE WITNESS: That I would not be reaching my
13 parole date if I took an active participation in that
14 trial.

15 BY MR. CLANTON:

16 Q Okay. And by "that trial," which trial do you
17 mean?

18 A Littrell, Gary Littrell.

19 Q But you went ahead and you testified in that
20 trial, didn't you?

21 A Yes.

22 Q Okay. And at that trial, what did you testify
23 to? What did you say?

24 A I said, I mean, a lot of things.

25 Q Well, what do you recall saying?

26 A Well, that -- that Deadeye had told me a lot of
27 things about how it is that he came to debrief, how it
28 is that, you know, he was coming here to this trial to

1 testify against Gary. And why it is that he wanted to
2 testify against Gary.

3 Q Well, did you testify that Mr. Healy had come
4 into some money?

5 A Yes.

6 Q And why was that important?

7 A Well, because that's what I was told.

8 Q What did Mr. Healy tell you that he came into
9 money for?

10 A Well, Healy didn't tell me that.

11 Q What did you testify about it?

12 A I testified that, exactly what it is that I was
13 asked to testify about.

14 Q Let's get this in detail, Mr. Clark.

15 A Sure.

16 Q What did you tell the jury, Mr. Littrell, about
17 Mr. Healy and some money that he had?

18 A That he had won a lawsuit, approximately \$3,000.

19 Q And why did he tell you that, for your testimony?

20 MR. FALLMAN: That's an ambiguous question.

21 THE COURT: Rephrase it.

22 MR. CLANTON: I'll rephrase.

23 Q You gave testimony at the Littrell trial about
24 Mr. Healy having received a settlement in a lawsuit,
25 correct?

26 A Uh-huh.

27 Q Did you testify about what Mr. Healy intended to
28 do with that money?

1 A What is -- what did he intend to do with it?

2 Q Yes.

3 A Yes, I aided and abetted in his escape; this is
4 what he's going to testify to.

5 Q And how is that going to happen by your
6 testimony?

7 A Well, Mr. Grizzle and I could concoct a story
8 which by -- I would come in here and testify that
9 Deadeye was going to give me some money to sell some
10 drugs and thereby make a profit and give him the money
11 back that would help him in aiding and abetting his
12 escape.

13 Q Well, isn't it true, Mr. Clark, that you
14 testified that Mr. Healy approached you; isn't that
15 correct? Initially, that's what you testified to?

16 A You mean he came to my cell or I came to his
17 cell?

18 Q That Mr. Healy approached you wherever at the
19 institution that Mr. Healy discussed with you his
20 settlement from a lawsuit. You testified to that,
21 correct?

22 A Yes.

23 Q And isn't it true that you testified at
24 Mr. Littrell's trial that Mr. Healy asked you to use
25 your knowledge of drug sales in prison to try and
26 increase the amount of his settlement? Isn't that true?
27 Isn't that what you testified to?

28 A Correct.

1 Q And isn't it true that he told you that he had
2 debriefed and was expecting to go to an institution or a
3 location with less security than the SHU? Did you
4 testify like that?

5 A Yeah, I did.

6 Q And didn't you testify that Mr. Healy indicated
7 that it was his intention to hit a fence?

8 A Yes, that's what I testified to.

9 Q And what does hit a fence mean to you, Mr. Clark?

10 A It means to escape, that's what it means.

11 Q And, in fact, Mr. Healy had debriefed, hadn't he?

12 A Well, according to the papers that I was shown.

13 Q So you knew that he'd debriefed?

14 A Again, according to the papers that I was shown.

15 Q So you came and you testified?

16 A Correct.

17 Q You took an oath?

18 A Correct.

19 Q Just like you did today?

20 A Correct.

21 Q And now your testimony is that you lied?

22 A That's correct.

23 Q Well, were you concerned at all after your
24 testimony, Mr. Clark, that in fact, you might not make
25 your parole like Officer Newman told you?

26 A No.

27 Q Well, did you ever write a letter to the district
28 attorney telling them that it appeared you weren't going

1 to get out-of-state parole, therefore, you weren't going
2 to come here and testify? Did you do that?

3 A Did I write them a letter, tell them that I
4 wasn't going to testify?

5 Q Yes.

6 A No, I believe that I wrote to them and told them
7 that the -- that there was somebody that said I wasn't
8 going to be -- a counselor or somebody said I wasn't
9 going to be allowed to testify, and therefore if the
10 deal that he and I -- or the deal that I was asking him
11 for, which was that I needed protection, you know what I
12 mean, if I was going to come in here that's what I need,
13 and if they couldn't give me that protection, then I
14 wasn't going to step forward.

15 Q Well, isn't it true, Mr. Clark, that you
16 didn't -- you just didn't want to assure your parole,
17 but you wanted to do something that was prohibited and
18 that was -- excuse me, Mr. Clark, and that something was
19 to obtain out-of-state parole?

20 A No, my parole was guaranteed, you know what I
21 mean. They can't stop a parole, the prosecution, you
22 attorneys, you can't stop it. CDC's not going to stop
23 my parole. I'm going to be paroled by law and they
24 don't discretion in there because -- because I'm at the
25 end of my sentence.

26 I asked for protection, I didn't ask to be
27 paroled, or they had the ability to deny my parole at
28 this time. The only way that my parole could be denied

1 is if I'm set up for another crime.

2 Q Okay, Mr. Clark, let's take that as fact.

3 A Okay.

4 Q But typically, aren't you paroled back to the
5 county of your commitment?

6 A Sure.

7 Q That's where you don't want to go, isn't it?

8 A Well, I mean not by coming in here and
9 testifying, I don't. After I testify, I don't want to
10 go back there.

11 Q Mr. Clark, you don't want to go back to the
12 county of your commitment, do you?

13 MR. FALLMAN: Asked and answered.

14 MR. CLANTON: No, it wasn't. He -- answer that
15 question.

16 THE COURT: You can answer it.

17 THE WITNESS: Yeah, if after -- today, no, I
18 don't.

19 BY MR. CLANTON:

20 Q Well, on January 24th, did you want to parole
21 back to your county of commitment?

22 A Yeah, I would have paroled back there if I wasn't
23 going to come here and testify.

24 MR. CLANTON: I would like to have this marked as
25 defense exhibit next in order.

26 THE CLERK: That would be NN.

27 THE COURT: Double N?

28 THE CLERK: Yes.

1 (Defense Exhibit NN marked for identification.)

2 MR. FALLMAN: Counsel, I wouldn't object, but I'd
3 like to reread it real quick.

4 MR. CLANTON: Okay.

5 Q I'd like you to look at this exhibit marked for
6 identification as Defense Exhibit NN. Is that a letter
7 you wrote, Mr. Clark?

8 A Yes.

9 Q Would you read that please if you need to, in
10 order to refresh your memory. First of all, do you know
11 what's in that letter?

12 A Yeah, I wrote it.

13 Q Okay. Do you recall it? You don't need to read
14 it?

15 A Well, I wrote it, but I'd like to reread it.

16 Q Take your time.

17 (Brief pause.)

18 A Okay.

19 Q You indicate in this letter dated January 24th,
20 1999, strike that.

21 Who was this letter directed to?

22 A Someone -- whoever's it was that was running the
23 particular unit that I was housed in at that time.

24 Q Okay. In this letter, do you tell the person
25 you're directing that to that you don't want to go to
26 your county of commitment on parole?

27 A Correct.

28 Q And do you tell them that you're not going to

1 provide any assistance, and I quote here, "substantial
2 assistance in Mr. Grizzle's case unless you get
3 out-of-state parole"?

4 A That's correct.

5 Q Okay. Mr. Clark, after your testimony in the
6 Littrell case, did you suffer any harassment or
7 intimidation by staff at Pelican Bay State Prison?

8 A As the direct result of testifying?

9 Q Yes.

10 A No.

11 Q Was your cell searched within a week after you
12 got back?

13 A Sure.

14 Q Things taken from your cell?

15 A No.

16 Q But your cell was searched wasn't it?

17 A Yes.

18 Q Why did that happen, in your opinion?

19 A Routine.

20 MR. FALLMAN: That calls for --

21 THE WITNESS: That's CDC policy and procedure.
22 They do that all the time. Search it almost every
23 month. At least once or twice a month.

24 BY MR. CLANTON:

25 Q Especially after a trial where you testified for
26 the defense, correct?

27 MR. FALLMAN: Objection. Argumentative and
28 speculative.

1 THE COURT: Overruled. Overruled. You may
2 answer.

3 THE WITNESS: I can't say it's because of the
4 trial.

5 BY MR. CLANTON:

6 Q Did you suspect that?

7 MR. FALLMAN: Objection as to relevance. It's
8 suspicions.

9 THE COURT: Overruled. He may answer.

10 THE WITNESS: Initially, I did.

11 BY MR. CLANTON:

12 Q Well, you'd already been, by your own admission
13 in the 602, you'd been threatened at gunpoint by staff,
14 right?

15 A Correct.

16 Q So it probably didn't take much of a quantum leap
17 of imagination to think that was repercussion for that
18 trial.

19 MR. FALLMAN: Your Honor, that question is a
20 quantum leap, I object to that.

21 THE COURT: Overruled.

22 THE WITNESS: But the threatening didn't happen
23 after, the cell search did. You know what I mean? And
24 as a result of me coming back from the trial the next
25 day and my cell having been searched, sure you come to a
26 conclusion.

27 BY MR. CLANTON:

28 Q Now you're saying that your 602 was a lie, too?

1 A Yeah, it was.

2 MR. CLANTON: I'd ask that this be marked as the
3 next defense exhibit in order.

4 THE CLERK: It would be double O.

5 THE COURT: Exhibit double O.

6 (Defense Exhibit OO marked for identification.)

7 THE COURT: Were you offering exhibit double N?

8 MR. CLANTON: Yes, I was your Honor.

9 THE COURT: Any objection to that?

10 MR. FALLMAN: Nope.

11 THE COURT: Double N is received.

12 (Defense Exhibit NN received in evidence.)

13 BY MR. CLANTON:

14 Q I'm going to have you look at that, that 602.

15 Did you sign and file it?

16 A Yes, I signed it.

17 Q And what do you say in there? You say that you
18 were --

19 A This is only part of it.

20 Q That's the official document portion, correct?

21 A This is only part of it.

22 Q I understand, but that's the first portion,
23 that's the actual form itself, isn't it, the 602 form?

24 A Yes.

25 Q Okay. And we discussed that earlier in
26 cross-examination, did we not, that contains the
27 scenario in which you write in detail about how you were
28 threatened at gunpoint by Officer Newman; contains that?

1 A No, this doesn't.

2 Q Well, read it closer, Mr. Clark.

3 A Well, I did and this doesn't say anything about
4 the gun. The other part does. That's why I'm saying
5 this is only part of it.

6 Q Well, let me ask you this, Mr. Clark: You talked
7 about an incident with Officer Newman with other
8 inmates, did you not?

9 A Yeah, with Grizzle, other prisoners.

10 Q Anybody else?

11 A Yeah.

12 Q How many other inmates did you discuss that with?

13 A Well, approximately six.

14 Q And they, in turn -- you, in turn, put together a
15 list of inmates that you'd spoken with who knew about
16 that; isn't that true?

17 A I put together a list of it?

18 Q Yes.

19 A No.

20 Q Well, did you solicit declarations from other
21 inmates regarding that incident?

22 A No, I didn't.

23 MR. CLANTON: May I have this marked as next
24 defense exhibit in order?

25 THE CLERK: Double P.

26 THE COURT: Double P.

27 (Defense Exhibit PP marked for identification.)

28 BY MR. CLANTON:

1 Q If I can get you to review that Mr. Clark,
2 please.

3 A Okay.

4 Q You need to review that?

5 A I know what's in it.

6 Q Okay. Tell us what's in that.

7 A There's about six affidavits by individuals on
8 behalf of my 602.

9 Q The 602 in which you're relating an assertion of
10 intimidation by an officer?

11 A Correct.

12 Q So you did talk to other inmates and they did
13 provide declaration?

14 A No, I didn't.

15 Q Where did you get those declarations, Mr. Clark?

16 A I got it from Mr. Grizzle.

17 Q And you, in fact, had -- do you know if you --
18 you talked -- told inmate -- you told -- you talked to
19 other inmates and you put those together with your 602,
20 isn't that correct?

21 A No, that's not what I said. That's not what
22 happened.

23 Q You filed that 602 with those declarations
24 appended to it, didn't you?

25 A Correct.

26 Q Okay. Thank you.

27 MR. CLANTON: Now I'd like to have this marked as
28 the next defense exhibit in order.

1 THE CLERK: Double Q.

2 (Defense Exhibit QQ marked for identification.)

3 MR. FALLMAN: Your Honor, his first exhibit in
4 this series, I don't remember the number, I think it's
5 the original 602 form he was talking about, is missing
6 Page 2, and for completeness --

7 THE COURT: The documents he wrote to the one
8 officer, double O, are the first page of the 602, and
9 the double P is the affidavit to the 602.

10 MR. FALLMAN: Double O we're asking counsel to
11 agree that it be amended as to the second page so the
12 complete document is in there rather than part of it.

13 THE COURT: We'll re-mark double O then so that
14 it has the full document.

15 THE CLERK: It's already on here.

16 THE COURT: All right. The clerk tells me it's
17 already there.

18 MR. FALLMAN: Oh, all right.

19 MR. CLANTON: Thank you.

20 Q I'm going to show you what's been marked
21 defendant's exhibit for identification QQ, Mr. Clark.
22 Can I have that back, Mr. Clark, please?

23 I'd like you to review that document, Mr. Clark.

24 A Yes.

25 Q Did you write that document?

26 A Yes.

27 Q When did you write that document?

28 A Maybe a week ago or maybe a little bit more.

1 Q Who did you intend to give that document to?

2 A My floor staff.

3 Q And did you do that?

4 A Yes.

5 Q What date did you do that?

6 A I don't know what specific date. It isn't
7 written down.

8 Q Can you approximate the date that you gave that
9 to floor staff?

10 A Maybe about a week ago.

11 Q Do you remember the name of the floor staff you
12 gave that to?

13 A Yes, his name was Daley.

14 Q Daley?

15 A Yes.

16 Q And did you give Mr. or Officer Daley any
17 instructions when you gave him that?

18 A No, it's pretty much self explanatory.

19 Q Did you expect him to deliver that to somebody?

20 A Yes.

21 Q Who did you expect that document to be delivered
22 to?

23 A To someone named Willis at the institution.

24 Q And did Officer Daley tell you, in fact, he would
25 deliver that to Officer Willis?

26 A No, but he did come back and tell me that he had
27 done that later on that day.

28 Q So Officer Daley, later in the day, told you that

1 that had been delivered to Officer Willis?

2 A Correct.

3 Q Do you know who Officer Willis is?

4 A Yeah.

5 Q Who is she?

6 A She's a person who works at the institution, a
7 C.O.

8 Q Why did you want that document to go to
9 Officer Willis?

10 A It's pretty much self explanatory, you know what
11 I mean, for them to pass it along to Mr. Fallman.

12 Q Mr. Fallman here is district attorney, correct?

13 A Correct.

14 Q Now what does that document say, Mr. Clark?

15 A It said I might want to tell Jim Fallman that now
16 that I have seen an effort on his behalf to do what he
17 says, I have a little bit more cooperating into the case
18 against Grizzle and have handwritten information by
19 Grizzle, et al, that he may need to know before Monday.

20 Q Now Mr. Clark, what are you saying that
21 Mr. Fallman has done for you, in that document?

22 A Well, if he intends to provide the security that
23 I asked for, you know what I mean, then, you know, then
24 I would go ahead. But I explained to Mr. Fallman and to
25 the SSU officer, as well as everybody, he has came to
26 me -- me from the beginning, that I wasn't going to come
27 in here and testify at all if they couldn't provide my
28 security. The safety -- my safety comes before coming

1 in here and participating in this trial, you can rest
2 assured of that.

3 Q Does that mean out-of-state parole, Mr. Clark?

4 A They can't guarantee any out-of-state parole, and
5 they explained to this me.

6 Q But that's what you're saying in your letter that
7 that's what you want from them or you're not going to
8 give them substantial assistance. That's what this
9 letter says, isn't it?

10 A No, no. They can't promise out-of-state parole,
11 you know what I mean? They explained that to me. They
12 said: We'll do what we can but we cannot promise you.

13 Q What did you receive -- from the time you wrote
14 this letter to the time you wrote that document, what
15 did you receive from Mr. Fallman that --

16 A Until I wrote to -- in between that document and
17 that one?

18 Q Yes.

19 A I didn't receive anything.

20 Q What are you referring to in that document then,
21 that you have received from Mr. Fallman?

22 A I received confirmation that he was going to
23 attempt to secure me out-of-state parole, if necessary.

24 Q There you go. That's what you were bargaining
25 for from the very beginning, wasn't it, Mr. Clark?

26 A That's something I could probably get without
27 coming in here to this trial, believe me.

28 Q This document says you're not going to provide

1 what you call substantial assistance, in quotation
2 marks, unless you get out-of-state parole. So you were
3 bargaining for that, weren't you?

4 MR. FALLMAN: Your Honor, that's the wrong
5 document.

6 MR. CLANTON: Would you like to review it,
7 Mr. Fallman?

8 THE COURT: Which document are you referring to?

9 MR. CLANTON: To Defendant's Exhibit NN, a letter
10 written on January 21st.

11 THE COURT: It's a double N, and you know which
12 one he's talking about?

13 THE WITNESS: That's the last letter that I
14 wrote.

15 MR. CLANTON: Would you like to review it?

16 THE COURT: Show him what it is so we're all on
17 the same page.

18 THE WITNESS: Okay.

19 THE COURT: All right. Now your question.

20 BY MR. CLANTON:

21 Q My question to you: In that letter, you are
22 telling -- you're saying that you're not going to give
23 substantial assistance, whatever that means --

24 A Correct.

25 Q -- unless you get out-of-state parole, right?

26 A Correct.

27 Q And what you're telling us here today is that you
28 wrote, if I may have the other document that you had,

1 that you wrote this document?

2 THE COURT: That is what?

3 MR. CLANTON: That's Defense Exhibit QQ.

4 Q That you wrote this document approximately a week
5 ago?

6 A Correct.

7 Q Saying that you're prepared to give that
8 assistance now, and basically thanks to Mr. Fallman.
9 And you're telling us now that that thanks was for his
10 assistance in granting you what you wanted in that
11 document there where you're asking for out-of-state
12 parole; isn't that correct?

13 A No, that's not what I'm telling you at all.

14 Q What are you telling, Mr. Clark?

15 A In fact, he doesn't have the jurisdiction to
16 grant me anything as far as out-of-state parole is
17 concerned. He doesn't have the jurisdiction. I know
18 that. I knew that from the beginning. I asked if I
19 can't be protected. This is -- this is at a point if
20 they can't protect me, you know what I'm saying, then I
21 wasn't coming here and testifying, you know what I'm
22 saying?

23 He said that, you know, I mean that they would
24 approach CDC, you know what I mean, and the Department
25 of Corrections and attempt to secure me out-of-state
26 parole. He can't guarantee that and it hasn't been
27 granted still today. I'm still attempt -- I still have
28 to go back to Sacramento when I parole.

1 Q That's because you haven't finished testifying,
2 right, Mr. Clark?

3 A When I leave here today, I still have to go back
4 to Sacramento.

5 Q But you wrote this about a week ago --

6 A I wrote it.

7 Q -- saying thanks? Right. This is a thank-you
8 note?

9 A Correct.

10 Q And it's because you're expecting that assistance
11 from Mr. Fallman, aren't you, to get you out-of-state
12 parole?

13 A No, I'm expecting him to do what he said he was
14 going to do, which was to approach CDC.

15 Q Well, Mr. Clark, you claimed earlier to have sold
16 your testimony in the Littrell trial for five hundred.

17 A Correct.

18 Q Are you selling your testimony here today for
19 out-of-state parole?

20 A I haven't been given any out-of-state parole and
21 it's not guaranteed I'm going to get it. That's what
22 I'm telling you. And even without coming in here and
23 testifying, I could still ascertain out-of-state parole
24 by going through the proper channels.

25 Q Then what are you bothering with Mr. Fallman for?

26 A Because it expedites the matter, you know what
27 I'm saying? For me coming in here -- again, at the risk
28 of repeating myself again, I'm going to tell you I came

1 in here because somebody's kid is at stake. I could
2 give a damn about Littrell or give a damn about any of
3 those other Klu Klux Klans. I don't care about that. I
4 care about the fact that I don't want to have to go to
5 bed thinking about Polly Klass or Richard Allen Davis or
6 their little girl, you know what I'm saying? And if I
7 can prevent that, that's what I'm going to do.

8 Now I don't care about this other stuff. I'm a
9 pretty big boy as far as being able to take care of
10 myself in a one-on-one situation with my -- one of these
11 Klu Klux Klans, but the fact of the matter is there's a
12 little girl that is probably going to get chopped up and
13 buried in somebody's shallow grave as a result of
14 Deadeye coming in here and testifying, that's it.

15 If he can provide me with assistance on
16 maintaining my security once I get to the streets, then
17 that's fine. If he can't, then as I explained to the
18 Governor, as I explained to the Department of
19 Corrections, I'm going to protect myself, you know what
20 I mean? If that's what I've got to do, if that means
21 that Aryan Brotherhood has to go into the grave before I
22 go into that, then that's what's going to happen.

23 Q These documents add up to the fact you're
24 thinking about Frederick Clark?

25 A Well, you know, I mean, if that's the way you
26 wanted it to be, then that's the way it's going to be.
27 You can spin it any way you want to.

28 Q You're not asking for anything in any of these

1 documents except something for yourself, aren't you,
2 Mr. Clark?

3 A I can get out of the state parole without his
4 assistance.

5 MR. CLANTON: I have no further questions, your
6 Honor.

7 THE COURT: Mr. Fallman?

8 MR. CLANTON: I move all of these exhibits into
9 evidence, your Honor.

10 THE COURT: No objection to those exhibits?

11 MR. FALLMAN: No.

12 THE COURT: Exhibits double O, double P, and
13 double Q, are all received in evidence.

14 (Defense Exhibits OO, PP, and QQ
15 received into evidence.)

16 THE COURT: Redirect?

17 MR. FALLMAN: I'm sorry, your Honor.

18 THE COURT: Go ahead.

19 REDIRECT EXAMINATION

20 BY MR. FALLMAN:

21 Q You understand, just so it's clear for the
22 record, that I do want you to have out-of-state parole
23 if that's what it takes to protect your life.

24 A Yes.

25 MR. FALLMAN: No further questions.

26 THE COURT: Anything further?

27 MR. CLANTON: If I can have a moment, your Honor.

28 I have nothing further of this witness.

1 THE COURT: May the witness be excused?

2 MR. FALLMAN: Yes, your Honor.

3 THE COURT: All right. Mr. Clanton, do you wish
4 him excused or reserved for possible questioning?

5 MR. CLANTON: Yes, I would like him kept on hold,
6 your Honor.

7 THE COURT: So you can step down, but we do need
8 to keep Mr. Clark available for possible further
9 testimony.

10 MR. CLANTON: And if we could approach briefly,
11 your Honor.

12 THE COURT: What I'm going to do is, ladies and
13 gentlemen, I'll give you a recess of ten minutes.
14 Remember the admonition. Do not discuss the case or
15 form any conclusion about it.

16 All right. Jurors have left the courtroom.
17 Since they have left, we can just do this in the clear.

18 MR. CLANTON: Well, your Honor, with the
19 testimony of Mr. Clark indicating he, in fact, delivered
20 the document in question to an Officer Daley with the
21 expressed direction that that go to Officer Willis, I
22 think that there should be sanctions. In fact, I
23 haven't been permitted the opportunity to investigate
24 that, so I am making these statements without that
25 investigation, granted, but I think that insomuch as
26 I've been having to take the testimony of this
27 individual and accept it as discovery, to conduct
28 cross-examination without the benefit of any

1 investigation, I think at this point, given the
2 testimony that, in fact, he did deliver a document to
3 Officer Daley with the express direction that it be
4 taken to Officer Willis and that confirmation of that
5 having been received by Officer Willis later in the
6 afternoon, who is, in fact, the litigation officer for
7 the prison, and the fact that I just received that
8 today, I think that under 1054 the appropriate sanctions
9 should be undertaken and that this testimony from
10 Mr. Clark -- well, I think the Court should just take
11 the appropriate sanctions.

12 MR. FALLMAN: Your Honor, I'd like to be heard on
13 that if I may.

14 THE COURT: All right.

15 MR. FALLMAN: Number one, I don't know -- I'm
16 absolutely sure that he did give that to Mr. Daley.

17 THE COURT: I guess we can -- we don't need the
18 witness any longer. All right, you can go ahead with
19 Mr. Clark.

20 Go on.

21 MR. FALLMAN: I'm sure that Mr. Clark gave that
22 thing to Mr. Daley. Whatever happened between Mr. Daley
23 and today in the last week, I have no idea. I saw that
24 thing right after Dan Smith handed it to me. Dan Smith
25 is here.

26 The offer of proof would be that at lunch, Kelly
27 Keefer, Dan Smith, Sergeant McKinney and I went back in
28 this holding cell, talked to Mr. Clark. He told us that

1 he had additional corroborating written evidence in a
2 book in his cell on the top bunk. I hope I have that
3 right. If I got it wrong, Dan Smith will tell you what
4 he heard.

5 Based on that, I asked both of them to go out
6 there and seize whatever it was to corroborate what he
7 was saying, see if there was something in his bunk,
8 bring it here, court make a copy for me, make a copy for
9 the defense and bring the original in this evidence bag
10 seized on the -- it says it was seized at 1330 hours,
11 whenever that is, and I've already proven that I'm not
12 good at military time, but I saw my copy of this, no
13 matter what happened to the copy that he gave to
14 Mr. Daley, five minutes before I handed it to
15 Mr. Clanton, and I didn't get to read it until
16 Mr. Clanton handed his copy to you up there at the
17 bench. You were reading his copy and I was reading my
18 own for the first time.

19 That's the offer of proof. That's what I think
20 Dan Smith and/or Kelly Keefer and/or Sergeant McKinney,
21 all of us would say.

22 THE COURT: Well, we don't know whether the
23 document ever got to Officer Willis, or if it did, we
24 don't know how long it sat in her in-basket, but even if
25 we knew, the code requires that suppression of evidence
26 can only be used as a sanction if there is no other
27 alternative.

28 There are -- in the first place, there is nothing

1 to indicate that the D.A. held them any longer than he
2 says he held it. And even if he did, there's no reason
3 why suppression of the evidence would be what we would
4 choose to do with that, anyway. We're only allowed to
5 do that if there's no other way to deal with the matter
6 under the code, under the very section you're relying
7 upon. I can only suppress evidence and keep the jury
8 from hearing it if there is no other way to resolve the
9 matter.

10 So the other point I would make is that Clark
11 himself is an impeachment witness. He came into that
12 case in the first place because he -- not because he
13 knew anything about the case but because he came in
14 saying that somebody else who claims he does know
15 something about the case, that is Healy, is a liar, so
16 he's a witness brought in to impeach Healy.

17 He now does a turnabout, and so in effect we are
18 trying -- this information is really another layer
19 further away from the facts of what happened in this
20 case, impeachment of an impeachment witness. And
21 whether the impeachment of the impeachment witness got
22 into the hands of the D.A. a day early or a day later
23 and hence in the hands of the defense does not strike me
24 as being a monumental matter in this case one way or
25 another. Particularly considering that Clark himself
26 has -- is already deeply impeached by the fact he has
27 admitted he has lied both under oath and not under oath
28 in the form of a 602, there is no doubt that this jury

1 has plenty of reasons to disbelieve him and to not trust
2 him. So there is really -- I think we're making a
3 mountain out of a mole hill, this issue of who got what
4 paper in their hand at what time here.

5 If you can make some further showing, we'll
6 consider whatever you can show me, but the motion to
7 suppress the testimony of Clark, if that's what you're
8 going for at this time, is denied.

9 MR. CLANTON: That was, in fact, the sanction I
10 was considering, your Honor.

11 I would just like to make one point for the
12 record, that we did have significant discussion about
13 Mr. Clark when we first learned of his decision, be that
14 what it may, to become a prosecution witness. I
15 immediately informed the Court of that development and
16 made a -- put together a list of those items which I
17 felt were going to be appropriate in order to
18 effectively cross-examine him, were he, in fact, to
19 become a prosecution witness. That did develop and we
20 were left with really basically nothing to cross-examine
21 him with with regards to this information.

22 We're put into a position where we had to attempt
23 to impeach him from the hip with these few documents
24 that we were given, and I think it did put us at a
25 significant disadvantage, put Mr. Grizzle at a
26 significant disadvantage, and I think we did everything
27 we could to alert the Court of our concerns regarding
28 Mr. Clark and the potential existing for his testimony,

1 and given his testimony is that, in fact, this document
2 was in the channels I think just makes a prima facia
3 showing of something afoot. I'm not sure what. And I'm
4 not accusing Mr. Fallman, I'm not accusing Mr. Smith,
5 I'm not accusing Officer Willis of anything untoward.
6 I'm just indicating to the Court that because we're not
7 able to do any investigation because of the Court's
8 ruling about having to go forward immediately upon
9 receipt of these documents, that we're unable to even
10 substantiate that claim. That's the position we're in.

11 THE COURT: Well, you cross-examined him quite
12 effectively, I thought. I didn't see you stepping in
13 any big trap, and I've taken the further step of
14 reserving him for later cross-examination some later
15 time in the trial after you have all had, I am assuming,
16 several more days to delve into this matter, which is
17 what you want in the first place, to delay his
18 testimony, so I don't see any harm. So what are you
19 asking me to do now?

20 MR. CLANTON: Well, I've made my request to the
21 Court. The Court's denied it. I'm just making a record
22 at this point.

23 THE COURT: You have no further questions or
24 nothing more?

25 MR. CLANTON: No.

26 THE COURT: All right. We'll take a ten-minute
27 break and reconvene at that time.

28 (Recess taken from 3:10 p.m. - 3:22 p.m.)